

In re ) Fair Hearing No. 10,514  
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Appeal of )

The petitioner appeals the Department of Social Welfare's determination that she is not eligible for emergency or general assistance benefits to pay her rental arrearage.

1. On May 3, 1991, the petitioner and her four minor children came to DSW's district office to apply for ANFC and other benefits. She also asked for help with her back rent. She was told that in order to be considered for back rent she would have to have something in writing from her landlady.

2. On May 6, 1991, the petitioner returned with a letter from her landlady dated May 3, 1991. That letter showed \$2,180.00 in past due rent and stated that the petitioner's "eviction will be effective Monday, May 6th". A copy of that notice is attached hereto as Exhibit 1 and incorporated by reference.

3. The petitioner's application was denied by the District Director on that day because she had received back rent within the last twelve months, had income in excess of the \$806.00 ANFC payment level during the last thirty days, and did not present with a "catastrophic situation".

4. The petitioner has lived in one unit of a duplex house since September 6, 1990. Her rent is \$575.00 per month excluding utilities. Although she was working and earning a good salary, the petitioner did not pay her rent after the first month. In December of 1990, the Department agreed to pay her back rent for October and November and her current rent for December in the amount of \$1,425.00 through the rent arrearage provisions of the emergency assistance program.

5. After January of 1991, the petitioner was unable to work and began receiving worker's compensation payments of \$339.00 per week which she received every Monday. She continued to receive those payments through April 29, the last Monday in April. On May 7, the director announced at the hearing that the petitioner's application of May 3, for ANFC benefits had been approved and would be paid to her that afternoon after she signed some documents.

6. Although she had income from worker's compensation of approximately \$1,366.00 per month, the petitioner paid only \$120.00 towards her rent from February through April. The petitioner stated that she did not pay due to depression and emotional problems. She had hoped to make some of the rent up through an \$800.00 tax return but that money was intercepted by Vt. Student Assistance Corporation for an unpaid loan. She appeared to be in some distress at the hearing and was accompanied by and apparently acting at the behest of her landlady. The petitioner and the landlady

appeared to have a personal relationship in addition to their business relationship.

7. The petitioner has received no other notices with regard to vacating the premises other than the one she procured from her landlady on May 3, 1991. She nevertheless believed that she would be forced to leave her home that week based on the representation by her landlady that she could evict the family herself and did not need to procure a court order.

8. The appeal was heard the day after the denial on an expedited basis. The hearing officer declined to reverse the Department's decision. A copy of that memo is attached hereto as Exhibit 2.

ORDER

The Department's decision is affirmed.

REASONS

Under the Department's regulations, emergency assistance is available in pertinent part as follows:

- A. Emergency Assistance to Needy Families with Children shall be granted to eligible families to meet emergency needs only, according to Department standards, when such need cannot be met under any other categorical assistance program administered by the Department. It is designed to respond quickly to a crisis situation which threatens the destitution of children.

Emergency assistance may be authorized during one period of 30 consecutive days in any 12 consecutive month period. The 12 consecutive month period begins on the first of the month of application, regardless of the actual day within the month when the application initiates the 30 consecutive days, and ends at the end of the month preceding this month one year later. Thus, when

the 30 consecutive days include parts of two calendar months, the household remains ineligible for ten calendar months thereafter.

. . .

C. Except as specifically provided in 2802 (catastrophic situations) Emergency Assistance shall be granted to those applicants who have dependent children included in their application only if they:

1. Have received during the 30-day period immediately prior to application, net income computed pursuant to Emergency Assistance regulations which is below the applicable ANFC payment level for that size household in similar living arrangements, (except that a household otherwise eligible under section 2813.3 will, for current rent (or mortgage) plus arrearage benefits, be exempt from this income requirement).

. . .

4. Have an emergency need which, if not met, will cause destitution; and:
5. Have exhausted all available income and resources. . .

. . .

W.A.M. § 2800

Rental arrearage payments are available under the following circumstances:

Rental (or Mortgage) Arrearage

Families with children who face loss of shelter due to non-payment of back rent (or mortgage), and have received a "notice of termination" under 9 VSA 4467 (a) (or "demand notice"), may be assisted with current rent (or mortgage) plus up to 2 months of back rent (or mortgage) providing all of the following criteria are met:

- a. the family meets all criteria for ANFC-EA eligibility, and
- b. the special state appropriation intended for this purpose has not been exhausted, and

- c. the landlord (or mortgage holder) agrees that, with this payment, any action intended to evict or otherwise cause this family to relocate will be terminated and will not be reinstituted on the basis of obligations remaining as of the date of payment, and
- d. there is a realistic probability that this assistance will actually prevent, rather than simply postpone, homelessness.

Denials based on exhaustion of funding will not require prior warning of funding status or amendment to this policy.

Payments made under this sub-section shall be for the actual monthly rental (or mortgage) obligations, disregarding maximums and prior payment periods as established in section 2813.1, but within such fiscal limits that condition d. above is met.

It is not intended that payment of 2 months rental arrearage (or mortgage payments) shall discharge the applicant's responsibility for any additional arrearage which may have accrued nor shall it impinge on any other legal means of collection of such debt, short of actual eviction (or foreclosure) or a payment plan leading to eviction (or foreclosure) through crediting current payments to the arrearage rather than the current payment due.

W.A.M. § 2813.3

The petitioner does not dispute the fact that she received emergency assistance in December of 1990, to pay a rental arrearage for October, November, and December of that year. As the date of her last emergency assistance payment was less than five months before this current request, it must be concluded that the petitioner has already used her yearly opportunity to obtain this type of assistance and cannot be a beneficiary of this program until December of 1991.

However, the "General Assistance" program which also

assists with emergency needs has no similar once per year only restriction. To be eligible for that program, however, the petitioner must demonstrate an emergency need and, among other requirements:

Have received during the 30-day period immediately prior to application net income computed pursuant to General Assistance regulations which is below the applicable ANFC payment level for that size household in similar living arrangements.

W.A.M. § 2600(C)(1)

The petitioner's ANFC payment level of \$806.00 per month is considerably less than her \$1,366.00 per month income from worker's compensation received by the petitioner in the 30 days before her application (\$339.00 X 4 (payments made on April 8, 15, 22, and 29)). The petitioner's actual income, in this case, is her net income for eligibility purposes as all the deductions available to arrive at net income relate to expenses which are not present here.<sup>1</sup> Therefore, it must be concluded that during the 30 days prior to her May 6 application, the petitioner had income in excess of her ANFC payment level.

As she has used up her yearly emergency assistance allotment and is over-income for the regular G.A. program,<sup>2</sup> the petitioner can only obtain assistance with her rent if she can show that she has a catastrophic situation:

2602      Catastrophic Situations

Any applicant who has exhausted all available income and resources and who has an emergency need caused by one of

the following catastrophic situations may have that need which is indeed caused by the catastrophe met within General Assistance standards disregarding other eligibility criteria. Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is a result of failure on the part of the applicant to explore potential resolution of the problem:

- a. Death of a spouse or minor dependent child; or
- b. A court ordered or constructive eviction due to circumstances over which the applicant had no control. An eviction resulting from intentional, serious property damage caused by the applicant; repeated instances of raucous and illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to efforts to correct substandard housing.
- c. A natural disaster such as flood, fire or hurricane; or
- d. An emergency medical need. Actions which may be evaluated as emergency in nature include, but are not limited to, the following:
  1. Repair of accidental injury;
  2. Diagnosis and relief of acute pain;
  3. Institution of treatment of acute infection;
  4. Protection of public health; or
  5. Amelioration of illness, which if not immediately diagnosed and treated could lead to disability or death.

The petitioner's eligibility for "catastrophic" assistance thus depends in the first instance upon her ability to show that she has a court ordered eviction.

Clearly, she does not have that. Prior to May 3, 1991, when the petitioner apparently solicited a letter from her landlady regarding her back due rent, the petitioner had nothing in writing indicating that her tenancy was to be terminated. While the landlady's letter indicates her quite credible displeasure with the situation, and contains a threat of imminent eviction, it is by no means certain that the landlady, who appears to have more than a strictly business relationship with the petitioner and her family, will actually force them into homelessness. In any event, the regulations eliminate the need for speculation and the possibility of collusion by actually requiring that the eviction have reached the stage where a court has ordered the petitioner to vacate. Until such time as that does happen, it cannot be found that the petitioner has presented a crisis situation which would make her eligible for "catastrophic" general assistance benefits. As the Department's decision is in accord with its regulation, it must be affirmed. 3 V.S.A. § 3091(d)

FOOTNOTES

<sup>1</sup>The regulations allow deductions for work expenses, work related child care, the cost of producing income, and child support payments paid out. See W.A.M. § 2608.1 - 6.

<sup>2</sup>It is not clear under the regulations whether rental arrearages can be paid under G.A. It appears that, had the petitioner been found eligible for this program, she would have been subjected to a \$198.00 maximum monthly current rental payment. See W.A.M. § 2613.1

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